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7 Attorneys for Defendants  
PERFORMANCE FOOD GROUP, INC. and  
8 VISTAR TRANSPORTATION, LLC,

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

JORGE PEREZ, on behalf of himself, all others similarly situated, and the general public,

Plaintiff.

15 |

VS.

16 PERFORMANCE FOOD GROUP, INC., a  
Colorado corporation; VISTAR  
17 TRANSPORTATION, LLC, a Delaware  
limited liability company; ROMA GOURMET  
18 FOOD ENTERPRISES OF CALIFORNIA,  
INC., a California corporation; and DOES 1-  
19 50, inclusive,

20 || Defendants.

CASE NO. 3:15-cv-02390

[Alameda County Superior Court Case No.  
RG15767109]

**DEFENDANTS PERFORMANCE FOOD  
GROUP, INC.'S AND VISTAR  
TRANSPORTATION, LLC'S  
NOTICE OF REMOVAL OF CIVIL  
ACTION FROM STATE COURT**

Complaint Filed: April 20, 2015

1      **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN**  
2      **DISTRICT OF CALIFORNIA:**

3  
4      PLEASE TAKE NOTICE that Defendants PERFORMANCE FOOD GROUP, INC.  
5      (“PFG”) and VISTAR TRANSPORTATION, LLC (“VT”) (collectively, “Defendants”), by and  
6      through their undersigned counsel, hereby remove the above-entitled action currently pending in  
7      the Superior Court of the State of California in and for the County of Alameda (the “State Court”)  
8      to the United States District Court for the Northern District of California on the ground that this  
9      Court has original jurisdiction over this civil action pursuant to 28 U.S.C. §§ 1331, 1332, 1441 and  
10     1446. In support of their Notice of Removal, Defendants aver as follows:

11  
12      **STATE COURT ACTION**  
13

14      1.      On April 20, 2015, Plaintiff Jorge Perez (“Plaintiff”) filed a Complaint against  
15      Defendants in the State Court, styled as *Jorge Perez, on behalf of himself, all others similarly*  
16      *situated, and the general public v. Performance Food Group, Inc., a Colorado corporation; Vistar*  
17      *Transportation, LLC, a Delaware limited liability company; Roma Gourmet Food Enterprises of*  
18      *California, Inc., a California corporation; and Does 1-50*, Case No. RG15767109 (the “State  
19      Court Action”), a true and correct copy of which is attached hereto as Exhibit A.

20  
21      2.      On or about April 29, 2015, Defendant PFG’s and Defendant VT’s registered  
22      agents for service of process were personally served with a copy of the Summons and Complaint.

23  
24      3.      True and correct copies of the Summons, Complaint, and every other process,  
25      pleading, and order served on Defendants PFG and VT in this action to date are attached hereto as  
26      the Exhibits identified below:

27      **Exhibit   Document**

28                  A      Complaint

1           **Exhibit    Document**

- 2           B       Summons on Complaint  
3           C       Civil Case Cover Sheet  
4           D       Notice of Complex Determination Hearing and Case Management  
5           Conference

6           4. Defendants are informed and believe that the following additional documents are  
7 also on file in the State Court Action:

8           **Exhibit    Document**

- 9           E       Clerk's Notice of Complex Determination Hearing and Case  
10          Management Conference  
11          F       Proofs of Service  
12          G       Amendment to Complaint (Fictitious/Incorrect Name)  
13          H       Rejection Letter Issued on Summons Issued and Filed  
14          I       Minutes of Hearing Re: Complex Designation and Case Management  
15          Conference  
16          J       Order on Complex Designation and Case Management Conference

17          5. On May 18, 2015, Plaintiff filed an Amendment to the Complaint purporting to  
18 substitute DOE 1 with Defendant Roma Food Enterprises, Inc. *See* Exh. G.

19  
20          6. Defendants PFG and VT are informed and believe that they are the only defendants  
21 which have been properly served with process in the State Court Action. Defendants ROMA  
22 GOURMET FOOD ENTERPRISES OF CALIFORNIA, INC. and ROMA FOOD  
23 ENTERPRISES, INC. (collectively, the "Roma Entities") are no longer in existence, and thus  
24 have not been and cannot be served with process and are to be disregarded for purposes of this  
25 removal. *See Nickerman v. Remco Hydraulics, Inc.*, 2006 WL 2329516, \*4 (N.D. Cal. Aug. 9,  
26 2006); *Stonybrook Tenants Asso. v. Alpert*, 194 F.Supp. 552, 559 (D. Conn. 1961). Likewise,  
27 Defendants Does 2-50 have yet to be identified and are therefore disregarded for the purposes of  
28 this removal. 28 U.S.C. § 1441(a). As such, Defendants PFG and VT are the only defendants

1 needed to join and consent to this removal, but to the extent otherwise required, Roma Entities  
2 consent to this removal.

3

4 **REMOVAL JURISDICTION**

5

6 7. This court has original jurisdiction under 28 U.S.C. §§ 1331, 1332 and 1367, the  
7 Class Action Fairness Act (“CAFA”), 28 U.S.C. §§ 1332(d), 1453 and 1711-15, and all other  
8 applicable bases for removal.

9

10 8. As required by 28 U.S.C. § 1441, Defendants remove this case to the United States  
11 District Court for the Northern District of California, which is the District Court embracing the  
12 place where the State Court Action was filed.

13

14 9. This action has not been previously removed to federal court.

15

16 10. This Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b), which provides  
17 that a Notice of Removal “shall be filed within thirty days after the receipt by the defendant,  
18 through service or otherwise, of a copy of the initial pleading setting forth the claim upon which  
19 such action or proceeding is based.” Defendants have timely filed this Notice of Removal within  
20 thirty days of April 29, 2015, the date they were served with and received the Summons and  
21 Complaint in this action.

22

23 11. In accordance with 28 U.S.C. § 1446(d), Defendants will provide contemporaneous  
24 written notice of this Notice of Removal to all adverse parties and to the Clerk of the State Court.

## **FEDERAL QUESTION JURISDICTION**

12. This Court has original jurisdiction over this action under 28 U.S.C. § 1331 because it involves claims and/or issues arising in whole or in part under the Constitution, laws, or treaties of the United States.

7       13. Plaintiff's Complaint involves a federal question because it involves claims and/or  
8 issues that arise under, are intertwined with, derive in whole or in part from, and/or require  
9 application and/or interpretation of the federal Fair Labor Standards Act ("FLSA"), 29 U.S.C. §  
10 201 et seq., and/or the regulations promulgated thereunder by the United States Department of  
11 Labor. More specifically, Plaintiff's purported **Seventh Cause of Action** for "Failure to Pay  
12 Employees for All Hours Worked" seeks overtime wages and related relief under the FLSA based  
13 on Plaintiff's claim that Defendants did not comply with the FLSA, 29 U.S.C. §§ 206 and 207, in  
14 failing to pay overtime wages for Plaintiff and the putative collective members he seeks to  
15 represent and failing to keep accurate records of all hours worked. *See Exh. A (Complaint), ¶¶ 94-*  
16 *103.* Therefore, Plaintiff's Seventh Cause of Action asserts a direct claim under the FLSA, over  
17 which this Court has original federal question jurisdiction. *Wiley v. Trendwest Resorts, Inc.*, 2005  
18 *WL 1030220, \*3 (N.D. Cal. May 3, 2005).*

## **SUPPLEMENTAL JURISDICTION**

22       14. Plaintiff's remaining claims under the California Labor Code and California  
23 Business and Professions Code for alleged failure to pay overtime at the correct rate, meal break  
24 violations, inaccurate wage statements, forfeiture of vacation wages, untimely payment of wages  
25 upon separation, unfair business practices, and penalties also derive from or otherwise relate to  
26 Defendants' wage and hour compliance with respect to their alleged employment of Plaintiff and  
27 the putative class members he seeks and/or purports to represent. Accordingly, this Court has  
28 supplemental jurisdiction over those claims pursuant to 28 U.S.C. § 1337(a).

## CAFA JURISDICTION

15. As an additional or alternative basis for removal of this action to federal court, this Court also has original jurisdiction over this action pursuant to CAFA, 28 U.S.C. § 1332(d)(2). Under CAFA, this Court has jurisdiction over class actions where any member of the class is a citizen of a State different from defendant, and where the aggregate amount in controversy exceeds the sum of \$5 million, exclusive of interest and costs, and the number of members of all proposed plaintiff classes in the aggregate is at least 100 class members. 28 U.S.C. § 1332(d)(2)-(6). CAFA authorizes removal of such actions under 28 U.S.C. § 1446.

16. This action is one which may be removed to this Court by Defendants because (1) the number of members of all proposed plaintiff classes in the aggregate is at least 100 class members; (2) there is diversity of citizenship between Plaintiff and Defendants; and (3) the amount in controversy exceeds \$5,000,000.00, exclusive of interest and costs.

17. Plaintiff purports to bring the California state law claims alleged in this action pursuant to California Code of Civil Procedure § 382 as a class action, and seeks class certification on behalf of the following classes:

Second Meal Break Class: All hourly employees of Defendants in California who worked a shift in excess of 10 hours during the Relevant Time Period.

FLSA Overtime Class: All hourly employees of Defendants in the United States that were not paid overtime wages at one-and-one-half (1.5) times the regular rate of pay when the total hours worked exceed forty (40) hours in a week during the Relevant Time Period.

Regular Rate Class: All persons employed by Defendants in California who earned non-discretionary remuneration that was not included in the regular rate of pay during the Relevant Time Period.

Vacation Pay Class: All persons employed by Defendants in California who earned paid vacation days, including, but not limited to, “Personal Holidays” and “Floating Holidays,” without receiving compensation for each vested paid vacation day during the Relevant Time Period.

Wage Statement Penalties Class: All Meal Break Class, Regular Rate Class and Vacation Pay Class members employed by Defendants in California during

1 the period beginning one year before the filing of this action and ending when  
2 final judgment is entered.

3 Waiting Time Penalties Class: All Meal Break Class, Regular Rate Class and  
4 Vacation Pay Class members who separated from their employment with  
Defendants during the period beginning three years before the filing of this  
action and ending when final judgment is entered.

5 UCL Class: All Meal Break Class, Regular Rate Class and Vacation Pay Class  
members employed by Defendants in California during the Relevant Time  
6 Period.

7 See Exh. A (Complaint), ¶ 13 (emph. omitted). All of the foregoing proposed classes, excluding  
8 the FLSA Overtime Class, are hereinafter collectively referred to as the “Proposed Class”

9

10 **CAFA Minimal Diversity of Citizenship**

11

12 18. **Plaintiff’s Citizenship.** Although the Complaint does not specifically allege the  
13 citizenship of Plaintiff, at all times during Plaintiff’s employment as a non-exempt warehouse  
14 employee, and at the time of Plaintiff’s termination of employment in June 2014, he had a  
15 California drivers’ license and his address of record with PFG reflected that Plaintiff was living in  
16 the State of California. See Exh. A (Complaint), ¶ 6. Accordingly, Plaintiff is a resident and  
17 citizen of the State of California. See, e.g., *Mondragon v. Capital One Auto Finance*, 776 F.3d  
18 880, 885-86 (9<sup>th</sup> Cir. 2013) (holding that, in connection with removal to federal court, a person’s  
19 continuing domicile in a state establishes citizenship “unless rebutted with sufficient evidence of  
20 change”); *Lew v. Moss*, 797 F.2d 747, 751-52 (9<sup>th</sup> Cir. 1986) (holding that California was the state  
21 of domicile for a party with a California residential address and a valid California drivers’ license).

22

23 19. **Defendant PFG’s Citizenship.** As shown on the California Secretary of State’s  
24 Business Entity Search website, PFG is a Colorado corporation with its corporate headquarters  
25 and principal place of business in Richmond, Virginia:

26 ///

27 ///

28 ///



Secretary of State      Administration      Elections      Business Programs      Political Reform      Archives      Registries

Business Entities (BE)
Online Services
- E-File Statements of Information for Corporations
- Business Search
- Processing Times
- Disclosure Search
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Statements of Information (annual/biennial reports)
Filing Tips
Information Requests (certificates, copies & status reports)
Service of Process
FAQs
Contact Information
Resources
- Business Resources
- Tax Information
- Starting A Business
Customer Alerts
- Business Identity Theft
- Misleading Business Solicitations

## Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, June 17, 2014. Please refer to [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	PERFORMANCE FOOD GROUP, INC.
Entity Number:	C1269325
Date Filed:	02/28/1985
Status:	ACTIVE
Jurisdiction:	COLORADO
Entity Address:	12500 WEST CREEK PARKWAY
Entity City, State, Zip:	RICHMOND VA 23238
Agent for Service of Process:	NATIONAL REGISTERED AGENTS, INC.
Agent Address:	818 W SEVENTH ST
Agent City, State, Zip:	LOS ANGELES CA 90017

\* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code [section 2114](#) for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

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See URL at <http://kepler.sos.ca.gov/cbs.aspx> (search terms entered: "Performance Food Group, Inc."). At its corporate headquarters, Defendant PFG's officers direct, control and coordinate its activities and the majority of its executive and administrative functions are performed there. Thus, PFG was not and is not a citizen of the State of California but, rather, was and is a citizen of the State of Colorado and/or the Commonwealth of Virginia for the purpose of determining jurisdiction. See *Hertz Corp. v. Friend*, 130 S.Ct. 1181, 1192 (2010) (for the purposes of removal, the "nerve center" test applies, whereby a corporation is deemed to be a citizen of the State where the corporation's officers direct, control, and coordinate the corporation's activities).

20. **Defendant VT's Citizenship.** As shown on the California Secretary of State's Business Entity Search website, VT is a Delaware corporation with its corporate headquarters and principal place of business in Richmond, Virginia:



Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, July 08, 2014. Please refer to [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	VISTAR TRANSPORTATION, LLC
Entity Number:	201200510158
Date Filed:	01/04/2012
Status:	ACTIVE
Jurisdiction:	DELAWARE
Entity Address:	12500 W CREEK PKWY
Entity City, State, Zip:	RICHMOND VA 23238
Agent for Service of Process:	NATIONAL REGISTERED AGENTS, INC. (C1941323)
Agent Address:	*
Agent City, State, Zip:	*

\* Indicates the information is not contained in the California Secretary of State's database.

\* Note: If the agent for service of process is a corporation, the address of the agent may be requested by ordering a status report.

- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
- For descriptions of the various fields and status types, refer to [Field Descriptions and Status Definitions](#).

[Modify Search](#) [New Search](#) [Printer Friendly](#) [Back to Search Results](#)

See URL at <http://kepler.sos.ca.gov/cbs.aspx> (search terms entered: "Vistar Transportation, LLC"). At its corporate headquarters, VT's officers direct, control and coordinate its activities and the majority of its executive and administrative functions are performed there. Thus, VT was not and is not a citizen of the State of California but, rather, was and is a citizen of the State of Delaware and/or the Commonwealth of Virginia for the purpose of determining jurisdiction. See *Hertz Corp. v. Friend*, 130 S.Ct. 1181, 1192 (2010) (for the purposes of removal, the "nerve center" test applies, whereby a corporation is deemed to be a citizen of the State where the corporation's officers direct, control, and coordinate the corporation's activities).

21. **Defendants Roma Entities' Citizenship.** As shown on the California Secretary of State's Business Entity Search website, Defendant Roma Gourmet Food Enterprises of California, Inc. was "merged out" and is no longer in existence.



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#### Business Entities (BE)

##### Online Services

- E-File Statements of Information for Corporations
- Business Search
- Processing Times
- Disclosure Search

##### Main Page

##### Service Options

##### Name Availability

##### Forms, Samples & Fees

##### Statements of Information (annual/biennial reports)

##### Filing Tips

##### Information Requests (certificates, copies & status reports)

##### Service of Process

##### FAQs

##### Contact Information

##### Resources

- Business Resources
- Tax Information
- Starting A Business

##### Customer Alerts

- Business Identity Theft
- Misleading Business Solicitations

## Business Entity Detail

Data is updated to the California Business Search on Wednesday and Saturday mornings. Results reflect work processed through Tuesday, May 12, 2015. Please refer to [Processing Times](#) for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity.

Entity Name:	ROMA GOURMET FOOD ENTERPRISES OF CALIFORNIA, INC.
Entity Number:	C1695300
Date Filed:	10/09/1991
Status:	MERGED OUT
Jurisdiction:	CALIFORNIA
Entity Address:	12650 E ARAPAHOE RD
Entity City, State, Zip:	CENTENNIAL CO 80112
Agent for Service of Process:	C T CORPORATION SYSTEM
Agent Address:	818 W SEVENTH ST 2ND FL
Agent City, State, Zip:	LOS ANGELES CA 90017

\* Indicates the information is not contained in the California Secretary of State's database.

- If the status of the corporation is "Surrender," the agent for service of process is automatically revoked. Please refer to California Corporations Code section 2114 for information relating to service upon corporations that have surrendered.
- For information on checking or reserving a name, refer to [Name Availability](#).
- For information on ordering certificates, copies of documents and/or status reports or to request a more extensive search, refer to [Information Requests](#).
- For help with searching an entity name, refer to [Search Tips](#).
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Likewise, Defendant Roma Food Enterprises, Inc. was acquired by Vistar Corporation on January 28, 2005 pursuant to a Stock Purchase Agreement and subsequently merged into Vistar Corporation on February 25, 2008. On November 9, 2010, Vistar Corporation changed its name to Performance Food Group, Inc. Therefore, the Roma Entities are no longer in existence, and their citizenship should be disregarded for purposes of removal. *See Nickerman*, 2006 WL 2329516 at \*4 (disregarding citizenship of “dissolved de facto” corporation as a nominal or sham defendant); *Stonybrook Tenants Asso.*, 194 F.Supp. at 559 (holding that “nominal or formal parties, being neither necessary nor indispensable,” and having no real interest in the outcome, will be *disregarded* for purposes of determining whether the requisite diversity of citizenship exists). Indeed, no service of process has been attempted by Plaintiff on these non-existent entities. *See Paragraph 6, supra*.

1       22. Based on the foregoing, CAFA's minimal diversity requirement is satisfied because  
2 Plaintiff purports to be a member of the putative class he seeks to represent and is a citizen of a  
3 state (California) that is different from Colorado, Delaware and Virginia.

## **Size Of Proposed Plaintiff Class**

7       23. According to the Complaint, the potential class is “so numerous that the individual  
8 joinder of each individual class member is impractical.” *See* Exh. A (Complaint), ¶ 15. Indeed,  
9 according to the data available to Defendants, there are at least 364 putative members of the  
10 Proposed Class. As such, the aggregate membership of the Proposed Class is at least 100 as  
11 required under CAFA.

## **CAFA Amount In Controversy**

15       24. The claims of the individual members in a “class action” are aggregated to  
16 determine if the amount in controversy exceeds the sum or value of \$5 million. See 28 U.S.C.  
17 §§ 1332(d)(6), (11). In addition, Congress intended for federal jurisdiction to be appropriate under  
18 CAFA “if the value of the matter in litigation exceeds \$5,000,000 either from the viewpoint of the  
19 plaintiff or the viewpoint of the defendant, and regardless of the type of relief sought (e.g.,  
20 damages, injunctive relief, or declaratory relief).” Senate Judiciary Committee Report, S. Rep.  
21 109-14, at 42. Moreover, the Senate Judiciary Committee’s Report on the final version of CAFA  
22 makes clear that any doubts regarding the maintenance of interstate class actions in state or federal  
23 court should be resolved in favor of federal jurisdiction. S. Rep. 109-14, at 42-43 (“[I]f a federal  
24 court is uncertain about whether ‘all matters in controversy’ in a purported class action ‘do not in  
25 the aggregate exceed the sum or value of \$5,000,000, the court should err in favor of exercising  
26 jurisdiction over the case . . . Overall, new section 1332(d) is intended to expand substantially  
27 federal court jurisdiction over class actions. Its provisions should be read broadly, with a strong  
28 preference that interstate class actions should be heard in a federal court if properly removed by

1 any defendant.”).

2

3       25. Plaintiff does not seek a specific dollar amount of recovery in his Complaint.  
4 However, a defendant may remove a suit to a federal court notwithstanding the failure of a  
5 plaintiff to plead a specific dollar amount in controversy. To that end, a defendant’s notice of  
6 removal need include only a plausible allegation that the amount in controversy exceeds the  
7 jurisdictional threshold, and a defendant’s allegations regarding federal court jurisdiction must be  
8 accepted as true unless and until otherwise contested by a plaintiff. *See Dart Cherokee Basin*  
9 *Operating Co. v. Owens*, 135 S.Ct. 547, 554 (2014).

10

11       26. Based on the payroll and employment data available to Defendants, and assuming  
12 for purposes of removal only that the allegations of Plaintiff’s Complaint regarding his theories of  
13 liability are true but without any type of express or implied admission that any such liability in fact  
14 exists, the amount in controversy for purposes of this Notice of Removal exceeds the \$5 million  
15 jurisdictional threshold under CAFA. To that point, Plaintiff’s Complaint alleges that he and the  
16 putative class members were “at all relevant times” not provided with *any* legally compliant  
17 second meal breaks or paid for non-compliant second meal breaks when they worked over 10  
18 hours per day. *See* Exh. A (Complaint), ¶¶ 29-30. Based on those allegations, Plaintiff seeks one  
19 additional hour of pay at the employee’s regular rate for each day that the ostensibly required meal  
20 break was not provided. *Id.* at ¶ 24, 33. Plaintiff’s Complaint also alleges that Defendants failed  
21 to include non-discretionary bonuses and/or shift differentials in calculating the regular rate of pay  
22 for overtime purposes and, as a result, seeks overtime wages and liquidated damages for all  
23 overtime hours worked. *Id.* at ¶ 50. Plaintiff’s Complaint further alleges that Defendants failed to  
24 pay all vested vacation wages, failed to provide accurate itemized wage statements, failed to pay  
25 all wages due at separation and that all of the foregoing constitutes unfair and/or unlawful business  
26 practices. *Id.* at ¶¶ 57, 64, 73, 77-87. As a result of the foregoing, Plaintiff seeks inaccurate wage  
27 statement penalties pursuant to Cal. Lab. Code § 226(e), unpaid vacation wages, waiting time  
28 penalties pursuant to Cal. Lab. Code § 203 and restitution pursuant to the California Unfair

1 Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 et seq. Plaintiff’s Complaint also  
2 seeks attorneys’ fees. *Id.* ¶¶ 34, 53, 59, 76, 93 and 103 and Prayer for Relief at ¶ M

4       27. Based on the payroll and employment data available to Defendants for the putative  
5 members of the Proposed Class during the applicable class periods, including, *inter alia*, the  
6 number of putative members of the Proposed Class, their average hourly rates of pay and typical  
7 work schedules, and their shifts and pay periods worked, and assuming that Plaintiff's allegations  
8 are taken as true that they are owed overtime wages and liquidated damages, and that they are  
9 owed meal break payments for each day they worked over ten hours per day, inaccurate wage  
10 statement penalties for each wage statement they received, waiting time penalties for each former  
11 employee who is a putative member of the Proposed Class during the applicable class period,  
12 vacation wages, restitution, civil or other penalties and attorneys' fees, the amount in controversy  
13 on Plaintiff's claims is plausibly estimated to exceed \$5 million.

15       28.     Accordingly, this Court has original jurisdiction in this action under 28 U.S.C. §  
16 1332 because CAFA permits removal of a class action where, as here: (1) there is minimal  
17 diversity of citizenship between the parties; (2) the membership of all proposed plaintiff classes in  
18 the aggregate is at least 100; and (3) the amount in controversy exceeds \$5 million.

## **VENUE**

22        29. As the State Court Action is now pending in Alameda County, California,  
23 Defendants are entitled, pursuant to 28 U.S.C. § 1441(a), to remove this action to the United States  
24 District Court for the Northern District of California, without waiver or limitation of their right to  
25 seek transfer of this action to another district pursuant to applicable law.

27       30. Nothing in this Notice of Removal is intended or should be construed as any type  
28 of express or implied admission by Defendants of any fact, of the validity or merits of any of

1 Plaintiff's claims, causes of action, and allegations, or of any liability for the same, all of which  
2 are hereby expressly denied, or as any type of express or implied waiver or limitation of any of  
3 Defendants' rights, claims, remedies, and defenses in connection with this action, all of which are  
4 hereby fully and expressly reserved. Further, Defendants expressly reserve their right to amend or  
5 supplement this Notice of Removal and the evidence in support thereof to the fullest extent  
6 permitted by applicable law.

7

8 WHEREFORE, Defendants respectfully request that the above-captioned action now  
9 pending in the State Court be removed to this United States District Court.

10

11 DATED: May 29, 2015

**McGUIREWOODS LLP**

12

13

By: /s/ Matthew C. Kane

Matthew C. Kane, Esq.

Sabrina A. Beldner, Esq.

Sylvia J. Kim, Esq.

15 Attorneys for Defendants

16 PERFORMANCE FOOD GROUP, INC. and  
VISTAR TRANSPORTATION, LLC

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## **PROOF OF SERVICE**

## **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1800 Century Park East, 8th Floor, Los Angeles, CA 90067.

On May 29, 2015, I served the following document described as **DEFENDANTS PERFORMANCE FOOD GROUP, INC.'S AND VISTAR TRANSPORTATION, LLC'S NOTICE OF REMOVAL OF CIVIL ACTION FROM STATE COURT** on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

Shaun Setareh, Esq.  
Tuvia Korobkin, Esq.  
Neil Larsen, Esq.  
**SETAREH LAW GROUP**  
9454 Wilshire Blvd., Suite 907  
Beverly Hills, CA 90212  
Tel: (310) 888-7771

*Attorneys for Plaintiff*

- BY MAIL:** I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid at Los Angeles, CA, on that same day following ordinary business practices. (C.C.P. § 1013 (a) and 1013a(3))
  - BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or other facility regularly maintained by the overnight service carrier, or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents, in an envelope or package designated by the overnight service carrier with delivery fees paid or provided for, addressed to the person(s) served hereunder. (C.C.P. § 1013(d)(e))
  - BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered the addressee(s). (C.C.P. § 1011)

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on May 29, 2015, at Los Angeles, CA.

/s/ Matthew C. Kane

MATTHEW C. KANE